

## Chapter Trans 510

### TRANSPORTATION FACILITIES ECONOMIC ASSISTANCE AND DEVELOPMENT (TEA) PROGRAM

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**Note:** Ch. Trans 510 was created as an emergency rule effective October 16, 1989.

**Trans 510.01 Purpose and scope. (1)** As required by s. 84.185 (4), Stats., the purpose of this chapter is to establish department criteria for implementing a flexible and expeditious process of evaluating and approving transportation facility improvements that are essential to economic development projects.

**(2)** The objective of the transportation facilities economic assistance and development program is to increase the number of jobs in this state by responding to the transportation needs of an economic development project when that project is contingent on the transportation facility improvement.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**Trans 510.02 Definitions.** In addition to the words and phrases as defined in s. 84.185, Stats., in this chapter:

**(1)** “Applicant” means a business, consortium or governing body.

**(2)** “Applicant’s share” means an amount of money or in kind services equaling no less than 50% of the final transportation facility improvement cost. In kind services may include, but are not limited to, engineering, land acquisition and construction.

**(3)** “Cost per direct job” means the grant ceiling divided by the number of direct jobs.

**(4)** “Department” means the department of transportation.

**(5)** “Direct jobs” means the number of eligible jobs directly associated with an economic development project and listed on the application, as reviewed and approved by the department.

**(6)** “Eligible jobs” means jobs that represent net employment gains in this state.

**(7)** “Final transportation facility improvement cost” means the actual contract cost incurred for constructing participating elements of approved transportation facility improvements, including contract change orders for work approved by the department.

**(8)** “Grant ceiling” means the department’s maximum financial participation in a transportation facility improvement.

**(9)** “Reviewed transportation facility improvement cost” means the estimated cost of the transportation facility improvement as reviewed and approved by the department.

**(10)** “Secretary” means the secretary of transportation.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**Trans 510.03 Application procedure. (1) APPLICATION PACKET.** Applicants shall contact the department secretary or his or her designee for an application packet containing the application requirements and a description of the application screening, evaluation, and funding process.

**(2) APPLICATION PROCESS.** Completed applications shall be sent to the department secretary or his or her designee. Applications shall be accepted throughout the year. The department shall expeditiously screen and evaluate applications in the order of receipt. Applications may not be evaluated for eligibility unless all information required in the application packet is included upon

submission. The results of the screening and evaluation shall be reported promptly to the applicant when completed.

**(3) INFORMATION REQUIREMENTS. (a)** The application shall request information necessary to determine how well the proposed transportation facility improvement and economic development project satisfy the criteria contained in s. 84.185, Stats., and this chapter. In addition, the application shall require the following:

1. A certification that the applicant will comply with all federal and state laws and local ordinances as they relate to the development and use of the transportation facility improvement.

2. A written endorsement of the application from any governing body which will own or have jurisdictional responsibility for the transportation facility improvement.

3. A description of the economic development project and the transportation facility improvement. The description shall contain appropriate maps or drawings and estimates of specific cost items for the transportation facility improvement such as land, engineering, and construction.

**(b)** Supplemental information beyond that contained in the application packet may be needed by the department in order to complete its review of an application. The department shall notify the applicant in writing of any supplemental information that is needed and shall set reasonable additional deadlines for the receipt of this information. If the information is not received by the additional deadlines established, the department may remove the application from consideration.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; CR 06-036; am. (1) and (2) Register August 2006 No. 608, eff. 9-1-06.

**Trans 510.04 Screening. (1) CRITERIA.** Applications that meet the following screening criteria shall be evaluated for funding eligibility if they are for transportation facility improvements not excluded under sub. (2):

**(a)** The economic development project is unlikely to occur in Wisconsin unless the transportation facility improvement is built.

**(b)** The transportation facility improvement is not likely to occur without the grant.

**(c)** The business development meets the definition of an “economic development project” set forth in s. 84.185 (1) (am), Stats.

**(d)** Construction of the transportation facility improvement would be scheduled to begin within 3 years of the date when a grant is awarded for the improvement.

**(2) EXCLUSIONS.** The following transportation facility improvements are ineligible for assistance:

**(a)** Street, road and highway improvements that are not open to the public and not under either the jurisdiction or ownership of a public authority.

**(b)** Any improvement that is not described under par. (a) and is not under the jurisdiction of a public authority, unless businesses or persons other than the economic development project may use the improvement.

(c) Airplane hangars and other airport facilities not listed in s. 84.185 (1) (d) 2., Stats.

(d) Parking lots, parking lanes and other lanes exceeding those required to provide adequate traffic capacity.

(e) Transportation facility improvements needed for business developments that are likely to displace employment in the state rather than create net employment gains. Such business developments are likely to include, for example, retail stores, eating and drinking establishments, recreation and entertainment facilities, and hotels and motels. An economic development project may include business developments that displace employment in the state, but the jobs associated with them shall not be counted as direct jobs.

(f) Transportation improvements for ethanol production facilities unless the department determines that a competitive bidding process, consistent with s. Trans 510.09 (3) (e) 1., is used for the construction of the ethanol production facility.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; CR 06-036: cr. (2) (f) Register August 2006 No. 608, eff. 9-1-06.

**Trans 510.05 Evaluation of eligibility.** Applications passing the initial screening shall be evaluated based on the criteria in s. 84.185 (2) (b), Stats., and this chapter. Determination of the eligibility of an application for funding shall be documented in an evaluation report and shall be based on how well the application satisfies the criteria in s. 84.185 (2) (b), Stats., and this chapter.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; am. Register, April, 1999, No. 520, eff. 5-1-99.

**Trans 510.06 Funding shares. (1) DEPARTMENT SHARE.**

(a) When awarding a grant, the department shall establish a grant ceiling. The grant ceiling shall be the lesser of either 50% of the reviewed transportation facility improvement cost or \$5,000 for each job created in this state as a direct result of the improvement or economic development. The grant ceiling may be increased if the secretary finds special circumstances exist justifying the increase. Special circumstances include change orders due to unforeseen circumstances in engineering design, construction or environmental compliance. The department may set ceilings at a reduced level for reasons including, but not limited to, the following:

1. A grant for 50% of the reviewed transportation facility improvement cost would result in a grant exceeding \$1 million.
2. Grants for all eligible applications would exceed available funds.

(b) The department's final level of financial participation in a transportation facility improvement may not exceed 50% of the final transportation facility improvement cost.

**(2) APPLICANT SHARE.** The applicant's share may include any of the following:

- (a) Any combination of local government and private funding.
- (b) Funds from the federal government if the use of the funds are under the jurisdiction of the applicant and the granting agency's rules permit using the funds for matching purposes.
- (c) In kind services including, but not limited to, engineering, land acquisition, and construction.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; CR 06-036: am. (1) (a) and (b) Register August 2006 No. 608, eff. 9-1-06.

**Trans 510.07 Grant awards. (1) AUTHORITY.** The secretary has the final authority to determine the eligibility of a transportation facility improvement, determine the grant ceiling, schedule improvements, obligate state funds, and set priorities.

**(2) PRIORITY.** If eligibility is established for more transportation facility improvements than can be funded at any time, priorities shall be determined by considering the department's cost per direct job, the geographic diversity of previous transportation facilities economic assistance and development grants and the

extent to which each application meets other criteria in s. 84.185 (2) (b), Stats.

**(3) LOANS.** When an economic development project contributes minimally to the economic growth of the state, such as when the project benefit/cost ratio is less than 1.0, the department may make loans for transportation facility improvements, not exceeding 50% of the cost of the improvement. Loan repayment shall commence no later than one year after completion of the project. Loan duration cannot exceed 7 years. The department shall charge interest at prevailing rates to a government as determined by the department.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; CR 06-036: am. (2), cr. (3) Register August 2006 No. 608, eff. 9-1-06.

**Trans 510.08 Assistance agreements. (1)** The scheduling of an approved transportation facility improvement and the obligation of state funds shall occur only after the eligible applicant, the department, and any applicable third parties execute a formal project agreement, setting forth specific terms, conditions and responsibilities of the parties. The secretary or his or her designee shall execute the agreement on behalf of the department. Responsibilities for scheduling and monitoring an approved transportation facility improvement shall be determined cooperatively by the department, the applicant and the governmental entity in which the transportation facility improvement is primarily located. The contract entered into by a grant or loan recipient is subject to the following requirements:

(a) Each grant or loan recipient shall submit a report to the department. Each contract shall specify the frequency and format of the report to be submitted to the department and the performance measures to be included in the report.

(b) For recipients of a grant or a loan of at least \$100,000, a verified statement shall be submitted to the department that shall include the following:

1. A reporting of the number of jobs associated with the grant or loan and other performance measures as required by the department. The department may determine the format, content and frequency of the verified statement, and may require that the verified statement include wage reports or similar documents filed with the department of workforce development.

2. Signature by both an independent certified public accountant licensed or certified under ch. 442, Stats., and the director or principal officer of the recipient to attest to the accuracy of the verified statement. The recipient shall make available for inspection the documents supporting the verified statement.

**(2)** A jobs guarantee with the local governing body shall be part of the project agreement when deemed necessary by the department in order to protect the public interest. The local governing body shall, in turn, be encouraged to develop a similar agreement with the economic development project. The jobs guarantee shall obligate the local governing body to reimburse the department for up to the full amount of the grant if either of the following occurs:

(a) The guaranteed number of direct jobs associated with the economic development project do not result within 3 years of the date the project agreement is executed.

(b) The guaranteed number of direct jobs associated with the economic development project do not exist 7 years after the date the project agreement is executed. The base number of jobs to be used for comparison shall be established on the date funds are awarded. Verification of the number of direct jobs associated with the economic development project shall be made utilizing information available from the department of workforce development and other sources.

**(3)** In order to ensure compliance with the terms of the project agreement under sub. (1), the department may perform audits and inspections of the applicant's and third parties' records related to the transportation facility improvement. The applicant shall, on request, provide the department with information necessary to

document whether the jobs guarantee has been satisfied. If the applicant submits false or misleading information to the department, or fails to comply with the terms of the contract entered into with the department and fails to provide to the satisfaction of the department an explanation for the noncompliance, then the department may do any of the following:

- (a) Recoup payments made to the recipient.
- (b) Withhold payments to be made to the recipient.
- (c) Impose a forfeiture on the recipient pursuant to the following:

1. The department shall use its discretion in determining the amount of the forfeiture, with consideration given to the integrity and responsibility of the recipient and the effect that the recipient's actions had on the public. Under no circumstances shall the forfeiture exceed 50% of the grant or loan. General transportation aids or other monies payable to the applicant may be withheld in the amount of the forfeiture.

2. The recipient may submit information and arguments in opposition to a proposed forfeiture and request an informal meeting with the department. If the department determines that the recipient's opposition raises a genuine dispute over facts relevant to the proposed forfeiture, it will designate a hearing examiner and conduct a fact-finding hearing where the recipient may appear with counsel, present witnesses, and confront and cross-examine any person the department presents. The department's decision to impose a forfeiture shall be made based upon the information in the administrative record or, if a fact-finding hearing was conducted, the written findings of fact prepared by the department's designated hearing examiner.

3. Until the forfeiture is paid in full, the department may consider the recipient ineligible for any further grants or loans under chs. Trans 510 and 512.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; CR 09-049; renum. (1) and (3) to be (1) (intro.) and (3) (intro.) and am., cr. (1) (a), (b) and (3) (a) to (c), am. (2) (b) Register November 2009 No. 647, eff. 12-1-09.

### Trans 510.09 Project development process.

(1) **ADMINISTRATIVE REVIEW.** The department shall review all applications in order to determine the extent to which the transportation facility improvement shall comply with the department's facility development process under sub. (2). When the department has determined that it will not delegate responsibility for any portion of the facility development process, the department shall sign a project agreement only after all the steps in sub. (2) are completed. When the department chooses to delegate some responsibility for the facility development process, the conditions in sub. (3) shall apply.

(2) **FACILITY DEVELOPMENT PROCESS.** The department's facility development process includes the following steps:

(a) Departmental approval of a complete environmental analysis appropriate for the level of the transportation facility improvement.

(b) Departmental approval of a final design study report for highway and road improvements or an equivalent document for airport, rail and harbor improvements.

(c) Acquisition of necessary rights-of-way using departmental procedures.

(d) Departmental approval and processing of the plans, specifications, and estimates for letting.

(3) **DELEGATION OF RESPONSIBILITY FOR THE FACILITIES DEVELOPMENT PROCESS.** When the department has determined that it is appropriate, the department may choose to delegate responsibility for approving plans, enforcing department standards, acquiring necessary rights-of-way, and letting bids to the local jurisdiction which is responsible for project management. The following conditions shall be applied:

(a) Highway, road, and airport improvements must employ the services of a registered professional engineer to be responsible for design and construction.

(b) The applicant must assume all responsibility for complying with all germane environmental requirements for the transportation facility improvement, and certify that an environmental analysis was completed and that all applicable environmental laws were followed.

(c) A design study report for highway and road improvements or an equivalent document for airport, rail and harbor improvements must be submitted to the department for approval prior to preparing final plans.

(d) A copy of the plans and specifications containing the engineer's seal as prepared for bidding purposes must be provided to the department prior to the start of construction.

(e) 1. Except as noted in subd. 2., all contracts shall be let to competitive bid and contracts awarded to the lowest responsible bidder. The applicant shall submit copies of bid advertisements and a certification of the date bids were taken listing all bidders and bid amounts. A written explanation shall accompany any certification where the contract is awarded to someone other than the low bidder.

2. Upon written determination by the local jurisdiction responsible for project management of the necessity to let a contract for construction of all or part of a rail improvement on railroad owned or controlled land, and with the written concurrence of the department in this determination, a contract for construction at cost may be let to the railroad without competitive bid.

(f) All real estate acquisition and required relocation of persons, families, businesses, or farms must be accomplished in accordance with existing state law. A written certification from the applicant to this effect shall be required after the real estate is acquired.

(g) State payments will be made after the improvement is complete and sufficient proof of cost is sent to the department. On improvements where the reviewed transportation facility improvement cost is over \$100,000, the department may pay on the basis of actual costs, but no more than monthly.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; CR 06-036; am. (3) (e) 1. Register August 2006 No. 608, eff. 9-1-06.